

CCRB INVESTIGATIVE RECOMMENDATION

Investigator Assigned: Daniel Cooper	Team: Squad #7	CCRB Case # : 201702888	<input type="checkbox"/> Force <input type="checkbox"/> Discourtesy <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Date/Time of Incident: Thu, 03/09/2017 01:26 PM	Location of Incident: In front of [REDACTED] [REDACTED]	Pct. of Occurrence: 120	Date S.O.L. Expires: 09/09/2018
Date/Time C/V Reported: Thu, 04/13/2017 06:59 PM	C/V Reported At: CCRB	How C/V Reported: On-line website	Date/Time Received at CCRB: Thu, 04/13/2017 06:59 PM

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED]
2. An individual	Victim	[REDACTED]
3. [REDACTED]	Victim	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. [REDACTED]			
2. [REDACTED]			
3. POM Richard Browne	00352	950113	120 PCT

Officer(s)	Allegation	Recommendation
A. POM Richard Browne	[REDACTED]	A. Exonerated
B. [REDACTED]	[REDACTED]	B. Exonerated
C. POM Richard Browne	Abuse of Authority: On March 9, 2017, in front of [REDACTED] in Staten Island, Police Officer Richard Browne frisked an individual.	C. Substantiated
D. POM Richard Browne	Abuse of Authority: On March 9, 2017, in front of [REDACTED] in Staten Island, Police Officer Richard Browne searched an individual.	D. Substantiated
E. [REDACTED]	[REDACTED]	E. Substantiated
F. [REDACTED]	[REDACTED]	F. Substantiated
G. POM Richard Browne	[REDACTED]	G. Exonerated
H. POM Richard Browne	Abuse of Authority: On March 9, 2017, in front of [REDACTED] in Staten Island, Police Officer Richard Browne frisked [REDACTED].	H. Substantiated

CCRB INVESTIGATIVE RECOMMENDATION

Officer(s)	Allegation	Recommendation
I. POM Richard Browne		I. Unsubstantiated
J.		
K.		
L.		
M.		
N.		
O. POM Richard Browne	Other: Police Officer Richard Browne failed to prepare a memo book entry as required.	O. Other Misconduct
P.		P. Other Misconduct
Q.		Q. Other Misconduct
R.		R. Other Misconduct
S.		S. Other Misconduct
T.		T. Other Misconduct

Case Summary

On April 13, 2017, [REDACTED] filed this complaint via the CCRB's on-line website on behalf of himself, [REDACTED] and an unidentified male, known only to the investigation as [REDACTED]

On March 9, 2017, at approximately 1:26 p.m., [REDACTED], [REDACTED] and [REDACTED] were in front of [REDACTED], in Staten Island, when PO [REDACTED] and PO Richard Browne, from the 120th Precinct, exited their vehicle and stopped them (**Allegations A and B**). PO Browne and PO [REDACTED] then frisked and searched [REDACTED] (**Allegations C through F**). Afterwards, PO Browne approached [REDACTED] and grabbed his waistband (**Allegation G**). After [REDACTED] was stopped, PO Browne frisked and allegedly searched [REDACTED] (**Allegations H and I**). PO [REDACTED] and PO Browne left the location. There were no arrests made, and no summonses were issued.

[REDACTED]

[REDACTED] recorded both incidents on his cellular phone. Those recordings are embedded below and located in Board Review 28 and Board Reviews 31-33. For summaries of these videos, see Board Review 29. This case surpassed the 90-day benchmark due to difficulties scheduling PO Browne, who had a month-long training, and due to attempts to identify, contact and interview [REDACTED] and [REDACTED]. This case was originally assigned to panel 10A-2017 but was omitted from the panel due to an impending attorney consult.



March 9, 2017.mp4



April 11, 2017-Stop and Frisk.mp4



April 11, 2017-Search.mp4

Mediation, Civil, and Criminal Histories

- This case was unsuitable for mediation.
- As of September 25, 2017, there was no Notice of Claim filed with the New York City Comptroller's Office (Board Review 1).
- According to the Office of Court Administration (OCA) records, [REDACTED] and [REDACTED] have had no past criminal convictions in New York City within the last ten years (Board Review 16). [REDACTED] was arrested on January 25, 2017, for criminal possession of a firearm and that criminal case is ongoing (Board Review 30).

Civilian and Officer Histories

- This is the first CCRB complaint filed by [REDACTED] (Board Review 17).
- [REDACTED] has had one previous CCRB complaint in which he was listed as a victim.
 - In CCRB case number 201703468, [REDACTED] was uncooperative regarding stop, discourtesy and force allegations (Board Review 18).

- [REDACTED]
- PO Browne has been a member of service for six years and has been the subject of 15 allegations stemming from five cases.
 - In CCRB case number 201504300, the Board substantiated a search of a person allegation and recommended formalized training. To date, the NYPD has not instituted any discipline.
 - In CCRB case number 201603510, allegations of force, stop, frisk and search of a person were closed as complainant uncooperative.
- [REDACTED]

Potential Issues

- [REDACTED], [REDACTED], PO [REDACTED] and PO Browne all identified one of the victims only by the nickname, [REDACTED]. However, none of them knew [REDACTED]'s given name and did not know any additional identifying information for him. PO [REDACTED] and PO Browne admittedly did not complete any police documentation related to the incident involving [REDACTED] on March 9, 2017, which further hindered the investigation's ability to identify him. Without additional identifying information or police documentation, database searches could not be conducted, and [REDACTED] remains unidentified. Similarly, [REDACTED] and the officers could not identify any additional witnesses that are seen in the video. [REDACTED] identified his cousin, [REDACTED] as being present but could not provide his real name or any contact information for him. Thus, contact could not be established with [REDACTED], [REDACTED] or the other witnesses involved, and their statements were not obtained.
- Although [REDACTED] testified that PO Browne did not make contact with his waistband, though he attempted to, PO Browne acknowledged that he successfully grabbed the area around [REDACTED]'s waist. Furthermore, the video evidence corroborates that the action did happen. Since the investigation determined the action did occur, the allegation is being pleaded and analyzed below.

Findings and Recommendations

Allegation A- Abuse of Authority- On March 9, 2017, in front of [REDACTED], in Staten Island, Police Officer Richard Browne stopped [REDACTED], [REDACTED] and an individual.

[REDACTED] stated that he and approximately seven individuals were standing with [REDACTED], who had what appeared to be a marijuana cigarette in his hands. PO [REDACTED] and PO Browne approached [REDACTED] and one of the officers said, "I see you rolling up. I can see the weed through the car." After [REDACTED] was stopped, PO Browne approached [REDACTED] and backed him into the building's alcove, preventing him from leaving. While speaking to [REDACTED], PO Browne

accused [REDACTED], [REDACTED] and [REDACTED] of smoking marijuana. [REDACTED] acknowledged possibly shaking hands with one of the passersby but denied that he made any physical contact with anyone else, or passed or exchanged any objects with anyone. [REDACTED] also denied that he smoked any marijuana before the officers arrived (Board Review 11).

[REDACTED] did not fully recall the incident but stated that he shook hands with [REDACTED], though they did not exchange any money or objects between the two of them. [REDACTED] denied that any of the men were rolling a marijuana cigarette or that they were smoking marijuana. [REDACTED] acknowledged that the area possibly smelled like marijuana since several of the building's tenants blow marijuana smoke out of their apartment windows, but [REDACTED] denied that the odor of marijuana emanated from him or [REDACTED] (Board Review 15).

As previously discussed, [REDACTED], [REDACTED] and the other men were unavailable to the investigation, and their accounts of these allegations were not obtained.

[REDACTED]

PO Browne stated that just before approaching [REDACTED], [REDACTED] and [REDACTED], they were among a group of additional unidentified individuals who dispersed, but since PO Browne did not specifically see any of the unidentified individuals in the group handling the marijuana cigarette, he did not approach them or plan to arrest them. Upon exiting the vehicle, PO Browne smelled the odor of freshly lit marijuana. PO Browne could decipher the smell of freshly lit marijuana because he has had narcotics training and has been involved in at least 50 marijuana-related arrests. Upon approaching [REDACTED] and [REDACTED], PO Browne no longer smelled marijuana near [REDACTED], but he smelled the odor emanating from [REDACTED] (Board Review 3 and 14).

PO Browne stated that he was traveling down [REDACTED] until he was approximately ten to twelve feet away from a group of individuals standing in front of [REDACTED]. Among the group, PO Browne saw [REDACTED], [REDACTED] and [REDACTED]. PO Browne only recognized [REDACTED], [REDACTED] and [REDACTED] because they are members of the [REDACTED] Gang. PO Browne knew members of the [REDACTED] gang because he had received lists of gang members from Field Intelligence Officers (FIO) and gang squads. As PO Browne passed the group he saw [REDACTED] finish rolling what appeared to be a marijuana cigarette, light it and begin to pass it to either [REDACTED] or [REDACTED]. PO Browne intended to stop [REDACTED], [REDACTED] and [REDACTED], to recover the marijuana cigarette and arrest them for criminal possession of marijuana.

An individual is guilty of criminal possession of marijuana in the fifth degree when they knowingly and lawfully possess marijuana in a public place and such marijuana is burning or open to public view. N.Y.S. Penal Law, Section 221.10 (Board Review 34). A police officer may stop a person when he reasonably suspects such a person is committing, has committed or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210, 215 (1976) (Board Review 19).

Despite the discrepant statements regarding who was officially stopped, the preponderance of the statements indicates that [REDACTED], [REDACTED] and [REDACTED] were all stopped. Both officers and [REDACTED] stated that [REDACTED] was in possession of marijuana, which he was displaying in plain view. Although [REDACTED] denied smoking marijuana prior to the officers' arrival, the undisputed scent of marijuana at the location and PO Browne's observation of [REDACTED] passing the marijuana to either [REDACTED] or [REDACTED] established the preponderance of the evidence that they were smoking marijuana. Thus, the officers were justified in stopping [REDACTED], [REDACTED] and [REDACTED] to further investigate the presence of marijuana. Therefore, it is recommended that **Allegations A and B be Exonerated.**

Allegation C- Abuse of Authority- On March 9, 2017, in front of [REDACTED], in Staten Island, Police Officer Richard Browne frisked an individual.

Allegation D- Abuse of Authority- On March 9, 2017, in front of [REDACTED], in Staten Island, Police Officer Richard Browne searched an individual.

Allegation H- Abuse of Authority- On March 9, 2017, in front of [REDACTED], in Staten Island, Police Officer Richard Browne frisked [REDACTED]

Allegation I- Abuse of Authority- On March 9, 2017, in front of [REDACTED], in Staten Island, Police Officer Richard Browne searched [REDACTED].

An attorney was consulted in regarding Allegation C through Allegation I.

[REDACTED] stated that PO [REDACTED] and PO Browne approached [REDACTED] first and that they both frisked the outside of [REDACTED]'s clothes. [REDACTED] specifically saw PO [REDACTED] pat down [REDACTED]'s waist, the front part of his body and torso. [REDACTED] stated that he witnessed PO Browne grab [REDACTED]'s sweatshirt pockets, but he did not recall if PO [REDACTED] ever went inside any of the pockets. PO Browne then walked over to [REDACTED] and patted him down, but [REDACTED] did not recall the details of the frisk or mention that [REDACTED] was searched (Board Review 11).

[REDACTED] stated that he was wearing a hooded sweatshirt and he had a court slip, his cell phone, and his keys in his right front pants pocket and his wallet in his back right pocket. [REDACTED] denied that he had any objects in the front pocket of his hooded sweatshirt. [REDACTED] recalled that PO [REDACTED] and PO Browne first searched [REDACTED] but he did not recall exactly how the search was conducted or where on [REDACTED]'s body PO [REDACTED] and PO Browne made contact. PO Browne reached into [REDACTED]' front pocket, back pants pockets, and then into the pocket of his hooded sweatshirt. [REDACTED] initially denied that PO Browne ran his hands over his pockets, but after watching the video of the incident, [REDACTED] recalled that PO Browne frisked the outside of his clothing prior to searching him. [REDACTED] stated that while the video did not capture PO Browne

reaching into his pockets, it occurred at approximately the 1:29 mark in the video (Board Review 15).

Initially, PO [REDACTED] did not recall frisking or searching [REDACTED] and denied observing PO Browne frisk or search [REDACTED]. After watching the video of the incident, PO [REDACTED] acknowledged that at the 0:11 mark, PO Browne, the officer to the left side of the frame, is seen going into the large front pockets of [REDACTED]'s hooded sweatshirt, the male seen wearing the blue hooded sweatshirt. Between the 0:11 mark and the 0:56 mark, PO [REDACTED] acknowledged that he was depicted searching first the left pocket and then the right pocket of [REDACTED]'s hooded sweatshirt. PO [REDACTED] acknowledged that he then went into both of [REDACTED]'s front pants pockets and shook the back pant pockets. PO [REDACTED] stated that he frisked and searched [REDACTED] solely to recover the marijuana. Upon viewing the video at the 1:29 mark, PO [REDACTED] acknowledged seeing PO Browne frisk [REDACTED], but denied seeing him frisk or search [REDACTED] during the incident. After viewing the video, PO [REDACTED] denied that he had any reason to believe that anyone at the location had a weapon or was armed (Board Review 2 and 13).

PO Browne searched the area around the men for the marijuana cigarette, but it had disappeared and he had no indication of where it went. Since PO Browne saw [REDACTED], [REDACTED] and [REDACTED] all pass the marijuana at one point, and they had all subsequently reached into their pockets, he believed that any or all of the three of them could be concealing the marijuana in their pocket(s). PO Browne asked [REDACTED], "Where is it?" and [REDACTED] replied, "I don't know what you are talking about." PO Browne then frisked [REDACTED]'s pockets solely to obtain the marijuana he believed was hidden there. PO Browne initially stated that he did not search [REDACTED], but after watching the video, PO Browne acknowledged that he also reached into [REDACTED]'s front pants pockets. Although PO Browne acknowledged that the video showed PO [REDACTED] frisking [REDACTED], PO Browne denied seeing that occur at the time of the incident.

After he approached [REDACTED], PO Browne could smell the odor of recently burned marijuana emanating from [REDACTED]'s direction. The smell made PO Browne believe that [REDACTED] was possibly concealing the marijuana. PO Browne acknowledged that he frisked [REDACTED], but he did not recall where on his body he frisked him. PO Browne also did not recall if he went into [REDACTED]'s pockets or otherwise searched him. PO Browne frisked [REDACTED] to recover the suspected marijuana. PO Browne did not recall if [REDACTED] had any bulges and he did not recall anything in particular that drew his attention to the part of [REDACTED]'s body that he frisked. Since PO Browne did not recover any marijuana he decided to let the men go without taking any additional police action. PO Browne wrote on his fly page "[REDACTED], [REDACTED], [REDACTED] 91," to record that he interacted with them on the date of the incident (Board Review 3 and 14).

[REDACTED] provided a video of the incident that he recorded on his cell phone. The video commences after PO [REDACTED] and PO Browne exit their vehicle and approach [REDACTED]. The video shows between the 0:10 mark to 0:58 mark, PO Browne and PO [REDACTED] frisked and searched [REDACTED]. At the 1:17 mark, PO Browne is seen frisking the front part of [REDACTED]'s hooded sweatshirt. The video pans away during the 1:29 mark in the video, where [REDACTED] alleged PO Browne reached inside of his pockets. The video is embedded below (Board Review 28 and 31).



March 9, 2017.mp4

A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not. People v. Reid, 24 N.Y.3d 615 (2014) (Board Review 38). Suspicion that an individual has engaged in a drug transaction is an insufficient basis for a frisk. People v. Brown, 204 A.D.2d 994; People v. Clark, 213 A.D.2d 946 (1995) (Board Review 25 and 26).

Based on the conclusive video footage, which was largely supported by officer statements following their review of the evidence, the investigation determined that both PO Browne and PO [REDACTED] frisked and searched [REDACTED] and that PO Browne frisked [REDACTED]. However, the search of [REDACTED], which was only alleged by [REDACTED] himself and no other civilian or officer, was not captured on the video footage.

Both PO Browne and PO [REDACTED] acknowledged frisking and searching [REDACTED] with the sole intent to recover the marijuana; however, at this time PO Browne had the intent to arrest [REDACTED], [REDACTED] and [REDACTED] since he had observed them smoking and handling marijuana, whereas PO [REDACTED] did not confirm his intent to arrest the men.

As previously established in Allegations A and B, the officers' observations of the men smoking marijuana provided them with probable cause that they were guilty of possession of marijuana, a misdemeanor. These observations would have allowed the officers to arrest them. Furthermore, PO [REDACTED] and PO Browne were consistent that prior to stopping the men, [REDACTED] and [REDACTED] walked away from [REDACTED] and they reached into their pockets, which occurred in harmony with the marijuana evidence disappearing. These observations reasonably heightened the officers' belief that the men were concealing marijuana on their person.

Although it would have been reasonable to frisk and search [REDACTED] and [REDACTED] incident to a lawful arrest, the video shows that neither officer verbally or physically initiated the arrest of [REDACTED] or [REDACTED], and both men were ultimately released without being summonsed or arrested. Despite PO Browne's stated intent to arrest the men – which was unconfirmed by PO [REDACTED] – the officers' probable cause did not provide them any authority to search the men incident to a lawful arrest absent effectuating an actual arrest. Absent this justification, there were no other factors leading to the frisk or search of the men.

Thus, the investigation determined by a preponderance of the evidence that the frisks and searches of [REDACTED] and the frisk of [REDACTED] were unreasonable under the circumstances. Therefore, it is recommended that **Allegations C, D, E, F and H be Substantiated.**

Although [REDACTED] stated that PO Browne searched his pockets, the video only shows PO Browne frisking the outside of [REDACTED]'s clothing. PO Browne did not recall searching [REDACTED] and no other civilian or officer recounted a search occurring. It is possible that PO Browne did search [REDACTED], as his stated intent was to recover marijuana; however, given that it is undisputed that the officers did not search everyone they suspected of marijuana possession, including [REDACTED], it is equally likely that [REDACTED] was not searched. Given the diverging

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statements, and absent conclusive video footage of this allegation, the investigation could not determine by a preponderance of the evidence whether PO Browne searched [REDACTED]. Therefore, it is recommended that **Allegation I** be closed as **Unsubstantiated**.

Allegation G- Abuse of Authority- On March 9, 2017, in front of [REDACTED], in Staten Island, Police Officer Richard Browne frisked [REDACTED].

An attorney was consulted in regards to this allegation.

[REDACTED] was wearing a black hooded sweatshirt and he had his wallet and keys in the same pants pocket, but he could not recall which pocket that was. He had a rolled up paper in one of his pants pockets, but he could not recall which one. PO Browne walked toward [REDACTED] and reached his left hand towards the left side of [REDACTED]'s pockets, to which [REDACTED] interjected, "You don't have a reason to search me." PO Browne replied, "I have reason to search you. You guys are over there smoking" (Board Review 11).

[REDACTED] stated that PO Browne approached [REDACTED], who had at least four sheets of paper in his hooded sweatshirt. PO Browne attempted frisk [REDACTED]'s sweatshirt, but did not do so because [REDACTED] slapped his hand away.

PO Browne stated that before he approached [REDACTED], he knew that a month prior [REDACTED] had been arrested by other members of the 120th Precinct Anti-Crime Team for being in possession of a firearm. PO Browne noticed a thick-cylindrical bulge protruding from [REDACTED]'s waistband, similar to how a gun would protrude, but he did not recall which side of [REDACTED]'s body the bulge was located. Since PO Browne noticed the bulge protruding from [REDACTED]'s waistband, had knowledge of his past weapon arrest, knew him to be an [REDACTED] gang member, and because the location is known for ongoing violence, PO Browne believed that [REDACTED] may have had a gun. PO Browne stated he only frisked the side of [REDACTED]'s body where he noticed the bulge protrude. It was not until after PO Browne felt the bulge and heard the sound of crumpling paper that he discovered it was paper. PO Browne stated that [REDACTED], without being asked, lifted his clothing and confirmed that it was hundreds of loose leaf papers which he had rolled into a cylinder and placed under his waistband. Since [REDACTED] was wearing either a jacket or a thick sweatshirt, PO Browne could not tell that the bulge was papers before he grabbed the bulge.



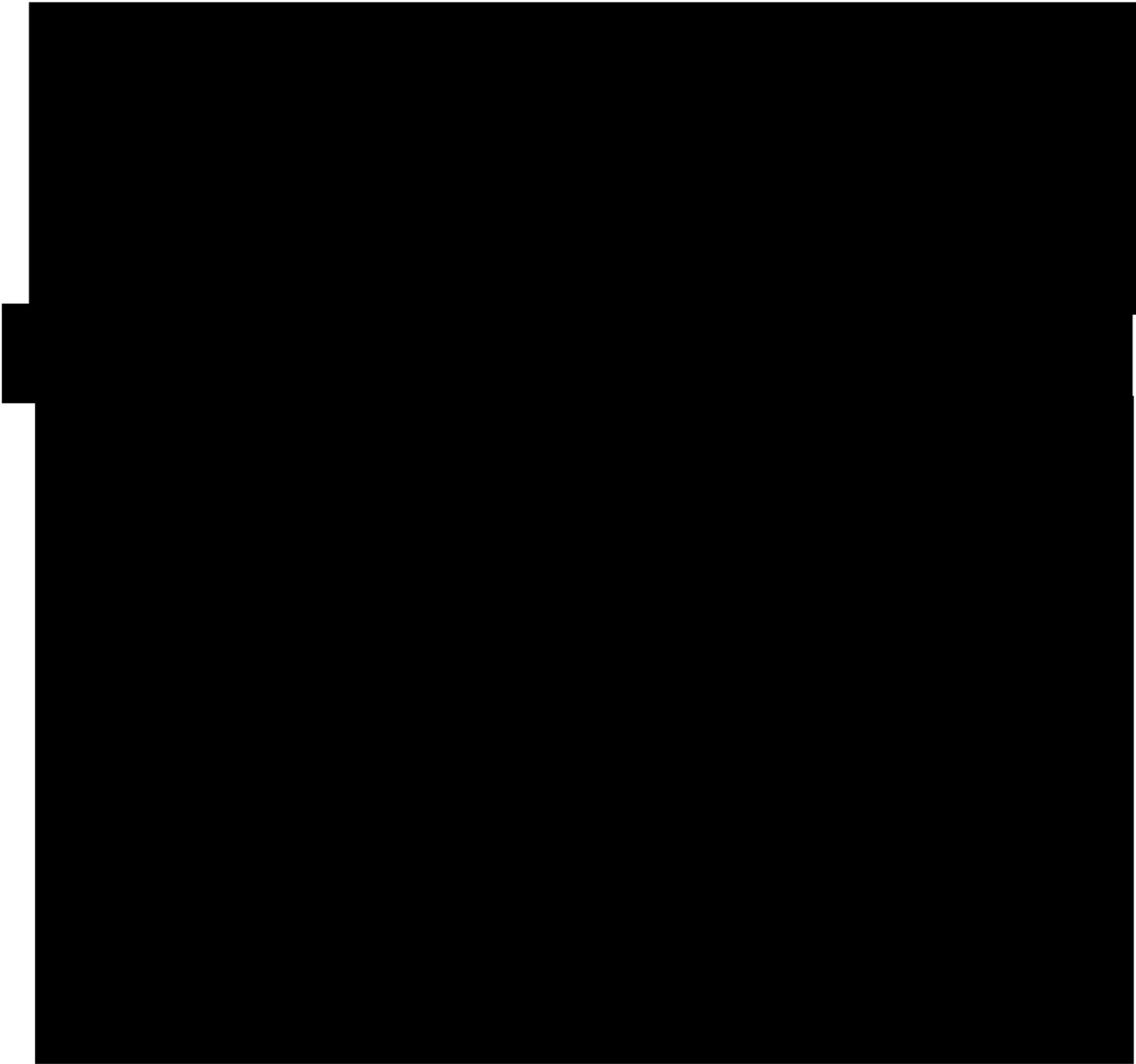
March 9, 2017.mp4

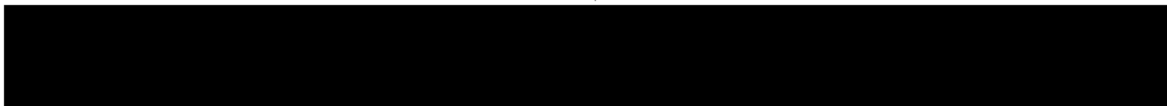
At the 0:58 mark in the video embedded above, before he reached for [REDACTED]'s waistband, PO Browne is seen asking [REDACTED], "What is that just papers?" PO Browne then reaches for [REDACTED]'s waistband. PO Browne stated that he did not recall if he noticed [REDACTED]'s papers before he frisked [REDACTED]'s waistband. After seeing this portion of the video, PO Browne said, since [REDACTED] had hundreds of papers rolled at his waistband, he believed it was likely [REDACTED] had a weapon concealed inside of the papers (Board Review 3 and 14).

An officer may frisk an individual if he has a particularized reasonable suspicion that the suspect is armed and dangerous. People v. Forest, 77 A.D.3d 511 (2010) (Board Review 38). If a justifiable

frisk fails to reveal the existence of a weapon and the basis for the officer's fear for his safety has been abated, the search must stop. People v. Robinson, 125 A.D.2d 259 (1986) (Board Review 39).

Given that PC [REDACTED] and PO Browne both had a firsthand knowledge of [REDACTED]'s prior criminal history involving firearms, his involvement in a gang, and then observed the presence of a cylindrical bulge near his waistband, which PO Browne cited as the main motivations for the frisk, the investigation credited that PO Browne had a particularized reasonable suspicion that [REDACTED] was armed. Furthermore, PO Browne only frisked the bulge and once realizing it was papers, ceased any further frisk or search of [REDACTED], in accordance with the standard set forth in Robinson. Therefore it is recommended that **Allegation G** be closed as **Exonerated**.

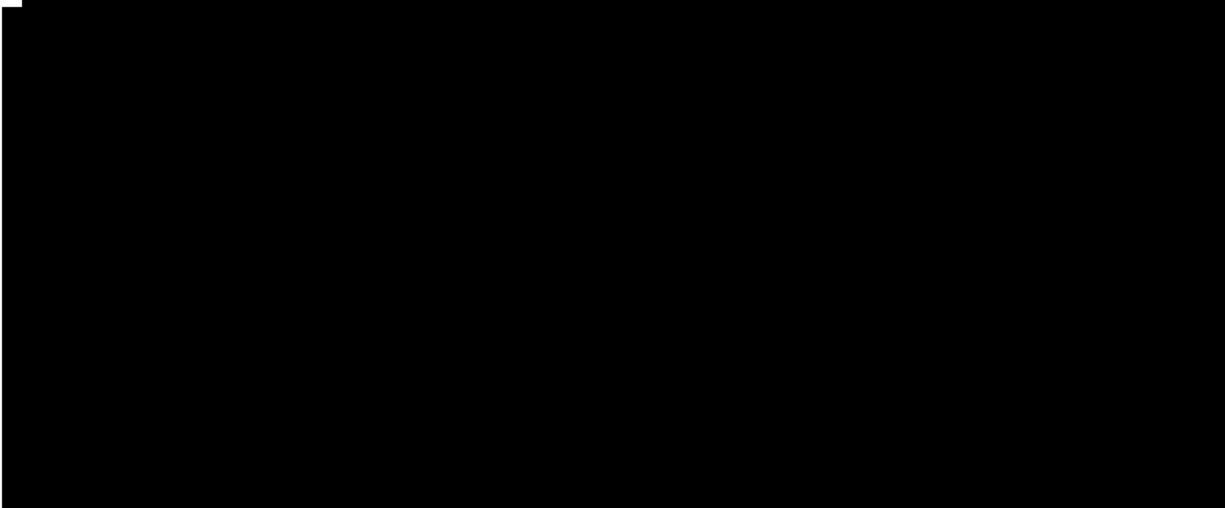
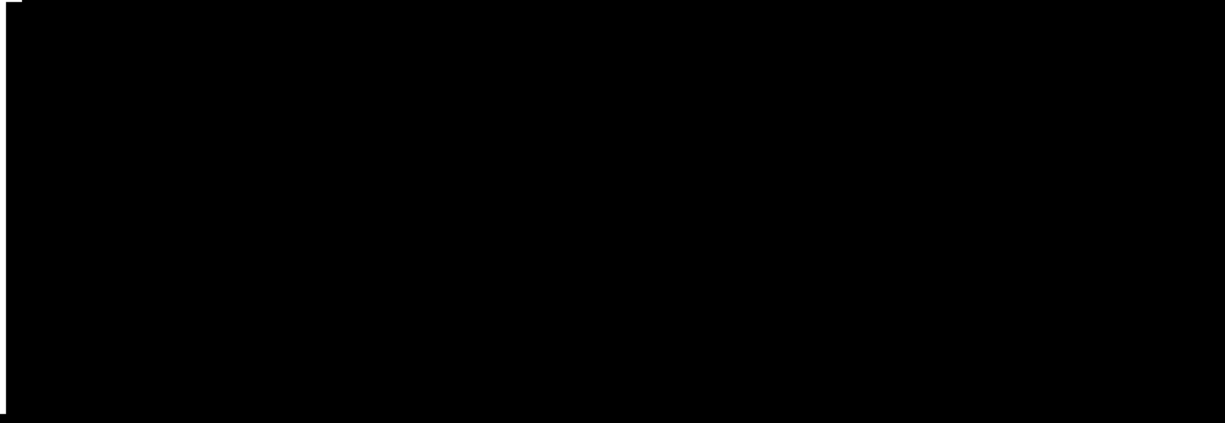
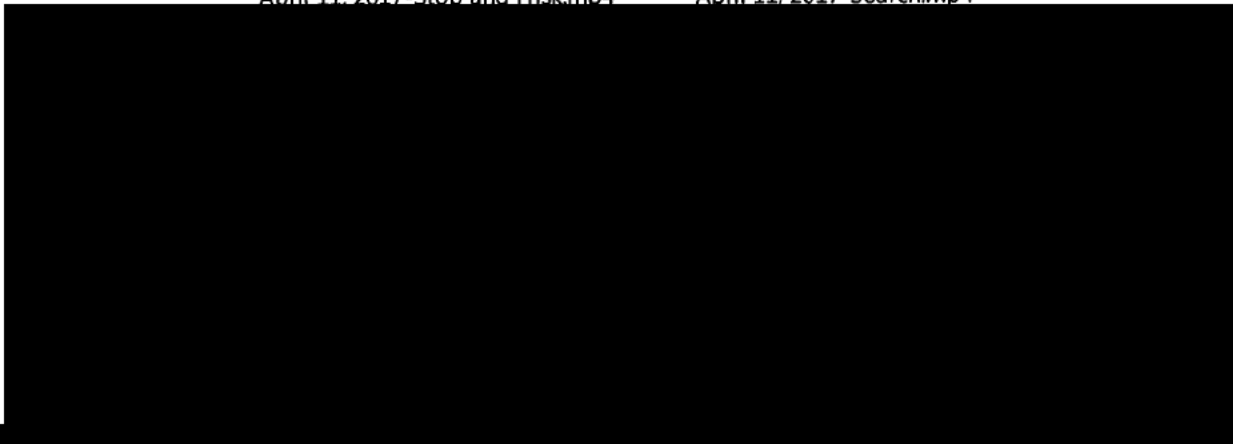




April 11, 2017-Stop and Frisk.mp4



April 11, 2017-Search.mp4





[REDACTED]

Allegation O- Other Misconduct- Police Officer Richard Browne failed to prepare a memo book entry as required.

[REDACTED]


As noted above, it is undisputed that on March 9, 2017, PO [REDACTED] and PO Browne stopped [REDACTED], [REDACTED] and [REDACTED] and subsequently engaged in further police action at the location.

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Officers are mandated to record in a memo book information pertinent to an assignment or observed or suspected violation of law, such as actions taken and narrative disposition. NYPD Patrol Guide, Procedure 212-08 (Board Review 20). A stop and frisk worksheet must be prepared for each person stopped pursuant to a Level Three Terry Stop. NYPD Patrol Guide, Procedure 212-11 (Board Review 36).

Squad: 07

Squad Leader:  DIANA TOWNSEND 12-8-17
Title/Signature Print Date

CCRB CTS – Confidential